

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2 A Limited Liability Partnership
3 Including Professional Corporations
4 NEIL A.F. POPOVIĆ, Cal. Bar No. 132403
5 ANNA S. McLEAN, Cal. Bar No. 142233
6 TENAYA RODEWALD, Cal. Bar No. 248563
7 LIÊN H. PAYNE, Cal. Bar No. 291569
8 JOY O. SIU, Cal. Bar No. 307610
9 Four Embarcadero Center, 17th Floor
10 San Francisco, California 94111-4109
11 Telephone: 415.434.9100
12 Facsimile: 415.434.3947
13 Email: npopovic@sheppardmullin.com
14 amclean@sheppardmullin.com
15 rodewald@sheppardmullin.com
16 lpayne@sheppardmullin.com
17 jsiu@sheppardmullin.com

18 Attorneys for Defendant,
19 SEAGATE TECHNOLOGY LLC

20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

22 IN RE SEAGATE TECHNOLOGY LLC
23 LITIGATION

24 Case No. 3:16-cv-00523-JCS

25 CONSOLIDATED ACTION

26 **SEAGATE TECHNOLOGY LLC'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL PORTIONS OF
OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

27 Date: March 30, 2018
28 Time: 9:30 a.m.
Place: Courtroom G
Judge: Hon. Joseph C. Spero

Second Consolidated Amended Complaint
filed: July 11, 2016

I. INTRODUCTION

Pursuant to N.D. Cal. Civil L.R. 79-5(d), Seagate Technology LLC (“Seagate”) submits this administrative motion to seal portions of the following documents in support of its Opposition to Plaintiffs’ Motion for Class Certification:

Document	Portion(s) to Be Sealed
Declaration of Donald Adams in Response to the Declaration of Andrew Hospodor and in Opposition to Plaintiffs' Motion for Class Certification	Declaration ¶¶ 11-12; 15-119
Declaration of Glen Almgren in Support of Seagate's Opposition to Plaintiffs' Motion for Class Certification	Declaration ¶¶ 5-30
Declaration of Patrick Dewey in Support of Seagate's Opposition to Plaintiffs' Motion for Class Certification	Declaration ¶¶ 5-39
Declaration of Harrie Netel in Support of Seagate's Opposition to Plaintiffs' Motion for Class Certification	Declaration ¶¶ 7-40
Declaration of Itamar Simonson, Ph.D. in Support of Seagate's Opposition to Plaintiffs' Motion for Class Certification	Portion of page 5 n.5
Declaration of Lién H. Payne in Support of Seagate's Opposition to Plaintiffs' Motion for Class Certification	Exhibit 1 – Begin Bates FED_SEAG0026697 Exhibit 2 – Begin Bates FED_SEAG0026839 Exhibit 3 – Begin Bates FED_SEAG0026867 Exhibit 4 – Begin Bates FED_SEAG0026751 Exhibit 5 – Begin Bates FED_SEAG0057277 Exhibit 6 – Begin Bates FED_SEAG0056259 Exhibit 7 – Begin Bates FED_SEAG0008927 reproduced as FED_SEAG0054950 Exhibit 8 – Begin Bates FED_SEAG0055094 Exhibit 9 – Begin Bates FED_SEAG0009670 Exhibit 10 – Begin Bates FED_SEAG0071085 Exhibit 11 – Excerpt of Confidential Hospodor Depo. Exhibit 12 – Excerpt of Dewey Depo. Exhibit 13 – Excerpt of Almgren Depo. Exhibit 14 – Excerpt of Khurshodov Depo. Exhibit 15 – Begin Bates FED_SEAG0002320 Exhibit 16 – Begin Bates FED_SEAG0009095 Exhibit 19 – Begin Bates FED_SEAG0026135 Exhibit 20 – Begin Bates FED_SEAG0026244 Exhibit 21 – Begin Bates FED_SEAG0009883

1 The authority and grounds for sealing these documents, referred to herein as “Confidential
 2 Information,” are set forth below and in the Declaration of Joy O. Siu in Support of Seagate’s
 3 Administrative Motion to Seal, filed concurrently herewith, and in the Declaration of Ronald Lane
 4 (“Lane Declaration”), filed on November 13, 2017, Dkt. 143. Pursuant to Civil L.R. 79-5, Seagate
 5 has submitted redacted and unredacted versions of the Exhibits sought to be sealed.

6 **II. THE CONFIDENTIAL INFORMATION IS SEALABLE**

7 In this district, a party seeking to file a document under seal must satisfy a two-step
 8 process. The party must “(1) comply with Civil Local Rule 79-5; and (2) rebut the [] strong
 9 presumption in favor of access that applies to all documents other than grand jury transcripts or
 10 pre-indictment warrant materials.” *Gaudin v. Saxon Mortg. Servs.*, No. 11-cv-01663-JST, 2013
 11 2013 WL 2631074, at *1, 2 (N.D. Cal. June 11, 2013) (internal citations and quotations omitted).

12 The first prong requires that the party seeking to seal the document establish that (1) “the
 13 document or portions thereof is privileged or protectable as a trade secret or otherwise entitled to
 14 protection under the law; and (2) is narrowly tailored to seek sealing only of sealable material.”
 15 *Id.* (citing Civil L.R. 79-5).

16 “With respect to the second prong, the showing required for overcoming the strong
 17 presumption of access depends on the type of motion to which the document is attached.” *Id.*
 18 With regard to dispositive motions, the “presumption can be overcome only if the party presents
 19 ‘compelling reasons supported by specific factual findings that outweigh the general history of
 20 access and the public policies favoring disclosure.’” *Id.* (quoting *Damakana v. City and Cnty. of*
Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006)). With regard to non-dispositive motions, the
 22 Ninth Circuit has “carved out an exception to the presumption of access to judicial records[,]” and
 23 those records may be filed under seal upon a showing of “good cause.” *In re Midland Nat. Life*
 24 *Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012) (per curiam) (internal
 25 quotation marks and citation omitted); *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir.
 26 2010) (applying “good cause” standard to all non-dispositive motions because such motions “are
 27 often unrelated, or only tangentially related, to the underlying cause of action”) (internal quotation
 28 marks and citation omitted). “[T]he vast majority of other courts within this circuit” apply the

1 “good cause” standard to sealing documents filed in connection with a Motion for Class
 2 Certification. *See In re High-Tech Emp. Antitrust Litig.*, No. 5:11-cv-02509-LHK, 2013 WL
 3 5486230, at *2 n.1 (N.D. Cal. Sept. 30, 2013) (collecting cases); *Gaudin*, 2013 WL 2631074, at *2
 4 (same); *Dugan v. Lloyds TSB Bank, PLC*, No. 12-cv-02549-WHA (NJV), 2013 WL 1435223, at
 5 *1 (N.D. Cal. Apr. 9, 2013) (“Unless the denial of a motion for class certification would constitute
 6 the death knell of a case, ‘the vast majority of courts within this circuit’ treat motions for class
 7 certification as non-dispositive standard applies”) (internal formatting omitted).

8 The Confidential Information proposed to be filed under seal satisfies the Northern
 9 District’s two-part test. First, Seagate has narrowly tailored its request to seal documents and
 10 redacted portions of only those documents “privileged or protectable as a trade secret or otherwise
 11 entitled to protection under the law.” L.R. 79-5(b). Second, good cause exists to protect Seagate’s
 12 sensitive business information from being released to competitors or to the public. The Adams,
 13 Almgren, Dewey, and Netel Declarations all reference Seagate’s internal testing documents and
 14 procedures, which are set forth in the Exhibits to the Payne Declaration.

15 **A. Seagate’s Documents Contain Trade Secrets**

16 The Ninth Circuit has adopted the definition of “trade secrets” set forth in the Restatement
 17 of Torts, holding that “[a] trade secret may consist of any formula, pattern, device or compilation
 18 of information which is used in one’s business, and which gives him an opportunity to obtain an
 19 advantage over competitors who do not know or use it.” *In re High-Tech Emp. Antitrust Litig.*,
 20 2013 WL 163779, at *1 (citing *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)). Generally,
 21 a trade secret “relates to the production of good It may, however, relate to the sale of goods or
 22 to other operations in the business” *Id.*; *see also Muench Photography, Inc. v. Pearson
 23 Educ., Inc.*, No. 12-cv-01927-WHO, 2013 WL 01927, at *4-5 (N.D. Cal. Aug. 15, 2013) (sealing
 24 document containing information relating to requesting party’s “product development efforts and
 25 business strategies to competitors,” when “competitors could use these strategies themselves—
 26 strategies that [the requesting party] spent significant resources to create”).

27 As explained in the Lane Declaration, the Hospodor Declaration relies on “Seagate’s Drive
 28 Development and Manufacturing Process” documents, as well as Seagate’s product testing

1 procedures, and product performance analysis. Dkt. 143 (“Lane Decl.”) ¶ 22, 3. The Confidential
 2 Information is used to rebut Hospodor’s Declaration, and thus is inextricably intertwined with
 3 Hospodor’s reliance on Seagate’s proprietary information, or the documents sought to be sealed
 4 themselves contain the proprietary and trade secret information Hospodor relied upon.
 5 Specifically, the exhibits to the Payne Declaration sought to be sealed are expressly referenced and
 6 relied upon by Mr. Hospodor in support of his expert opinion. See Dkt. 146, Ex. B, Appendix 1,
 7 Ex. A (detailing Bates numbers of documents Hospodor analyzed). Thus, the Confidential
 8 Information is sealable under Civil Local Rule 79-5 as protectable trade secret information and/or
 9 otherwise protectable by law. See *Gaudin*, 2013 WL 2631074, at *2.

10 **B. Good Cause Supports Seagate’s Request to Seal the Confidential Information**

11 There is also “good cause” to seal the Confidential Information. *Gaudin*, 2013 WL
 12 2631074, at *2. Seagate takes considerable effort to ensure all of this information is kept from the
 13 public; indeed, this information was only disclosed in this case pursuant to a stipulated Protective
 14 Order. Lane Decl. ¶ 3-4; Dkt. 61. The information is also commercially sensitive and highly
 15 valuable to Seagate. *Id.* ¶¶ 4, 21-22. Should information regarding Seagate’s product design,
 16 development, and testing become available to its competitors, it could be used to harm Seagate’s
 17 “competitive standing.” *Id.*; *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (sealing
 18 appropriate to prevent documents from being used to harm to litigant’s competitive standing);
 19 *Muench Photography, Inc.*, 2013 WL 4475900, at *4-5.

20 **III. CONCLUSION**

21 For the foregoing reasons, this Court should seal the Confidential Information.

22 Dated: January 5, 2018

23
 24 By _____ /s/ Anna S. McLean
 25 _____ ANNA S. MCLEAN

26 Attorneys for Defendant,
 27 SEAGATE TECHNOLOGY LLC
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